

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GEORGE KEPHART)

For Appellant: George Kephart, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of George Kephart against a proposed assessment of additional personal income tax in the amount of \$124.54 for the year 1975.

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The issue presented is whether appellant qualified as a head of household for the year 1975.

Appellant separated from his wife in December 1974, and lived apart from her throughout the year 1975. An interlocutory decree of dissolution was filed in December 1975, and the **final** dissolution decree was entered in April 1976. During 1975; **appellant** fully supported his mother, who resided with appellant and was named by appellant as his qualifying dependent for head of household purposes. Respondent denied the **claimed status** on the ground that appellant's mother was not a qualifying dependent within the meaning of the applicable statutes. **However**, appellant was allowed a dependent exemption credit for his **mother**. **After appellant's protest was denied**, he filed this timely appeal.

section 17042 of the Revenue and Taxation Code provides that in order to claim head of household status, an individual must be unmarried and maintain a home which is the principal place of abode of a qualifying dependent, who may be the taxpayer's parent. (Rev. & Tax. Code, § 17042, **subd. (b).**) For purposes of this section, "unmarried" means that the **taxpayer** must be legally separated from his spouse under a final decree of divorce or a decree of separate maintenance. (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a)(D).) **Appellant's** interlocutory decree of dissolution clearly does not meet this **requirement**.

Furthermore, appellant did not qualify for head of household status under Revenue and Taxation Code section 17173, subdivision **(c)**, which extended the benefits of that status to certain married individuals for taxable years beginning on or after January 1, 1974. That subdivision provides in relevant part as follows:

(c) If--

(1) An individual who is married ... and who files a, separate return maintains as his home a household which constitutes for more than one-half of the **taxable** year the principal place of abode of a dependent. (A) who ... is a son, stepson, daughter, or stepdaughter of the **individual**, and (B) with respect to whom such individual is entitled to a **credit for the taxable year under Section 17054**,

(2) Such individual furnishes over half of the cost of maintaining such household during the taxable year-, and

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(3) During the entire taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married.

While it appears that appellant met requirements (2) and (3) cited directly above, his mother is not a qualifying dependent as described in subdivision (c) (1). All three conditions must be satisfied in order to claim head of household status and, unfortunately, appellant simply did not meet the statutory requirements.

Accordingly, respondent's action in this matter must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of George Kephart against a proposed assessment of additional personal income tax in the amount of \$124.54 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of April, 1979, by the State Board of Equalization.

William W. Bennett, Chairman
Robert Kern, Member
James W. Cunningham, Member
John R. Kelly, Member
_____, Member